

SETTLEMENT AND RELEASE OF ALL CLAIMS RELATED TO CERTIFICATE OF NEED APPLICATIONS

I. INTRODUCTION

1.1 This Settlement Agreement (Agreement) is entered into by the following Parties:

- (a) Washington State Department of Health (the Department);
- (b) US HealthVest, LLC, a Delaware limited liability company;
- (c) Vest Thurston, LLC, a Delaware limited liability company and fully-owned subsidiary of US HealthVest, LLC;
- (d) Universal Health Services, Inc. (UHS), a Delaware corporation;
- (e) BHC Fairfax Hospital, Inc. (Fairfax), a Tennessee corporation owned by Universal Health Services, Inc.;
- (f) Providence Health & Services–Washington (Providence), a Washington nonprofit corporation; and,
- (g) Olympia Behavioral Health LLC (OBH), a Washington limited liability company operated as a joint venture between BHC Fairfax Hospital, Inc. and Providence Health and Services–Washington.

1.2 US HealthVest, LLC and Vest Thurston, LLC are collectively referred to as HealthVest. HealthVest, Fairfax, Providence, UHS, OBH and the Department are referred to collectively as “the Parties”.

II. RECITALS

2.1 Whereas, on July 13, 2016, the Department issued CN # 1580 to HealthVest to establish a 75-bed psychiatric hospital in Lacey, Washington (herein called the “HealthVest 75 Bed CN”). Providence requested an adjudicative proceeding to contest the issuance of the 75 Bed CN. An adjudicative hearing was held on December 5, 6, and 7, 2016. The issuance of the 75 Bed CN was upheld in an Initial Order issued May 9, 2017; and again in the Department’s Final Order issued October 31, 2017. On November 29, 2017, Providence petitioned for judicial review of the Final Order in Thurston County Superior Court at Docket Number 17-2-06272-34 (herein called the “Superior Court Action”);

2.2 Whereas, on December 22, 2016, HealthVest filed an application for a certificate of need to expand by 40 beds its approved psychiatric hospital in Lacey, Washington, for a total of 115 beds, designated application CN17-22 (herein called the “HealthVest 40 Bed Application”). On October 6, 2017, the Department declared a pivotal unresolved issue in that application. Fairfax, Providence, and OBH each submitted public comments, both before and after the Department’s declaration of a pivotal unresolved issue, in opposition to the 40-Bed Application;

2.3 Whereas, on June 21, 2016, Fairfax, Providence, and OBH filed an application for a certificate of need to establish an 85-bed psychiatric hospital in Lacey, Washington, designated application CN16-40 (herein called the “OBH 85 Bed Application”). A portion of the beds for the proposed new hospital would replace the inpatient psychiatric beds currently operated by

Providence at Providence St. Peter Hospital in Olympia. On April 24, 2017, the Department issued an evaluation denying the 85 Bed Application. OBH requested a public hearing on reconsideration, which was denied. OBH requested adjudicative proceedings to contest both the initial application denial and the denial of reconsideration; the two hearing requests were consolidated, and HealthVest was permitted to intervene;

2.4 Whereas, the Parties wish to come to agreement regarding the objections and appeals now pending concerning the HealthVest 75 Bed CN, the HealthVest 40 Bed Application and the OBH 85 Bed Application, in an effort to expedite the construction of desperately needed in-patient psychiatric hospital beds in the planning area; and,

2.5 Whereas the Parties now desire to resolve all matters between them relating in any way to CN # 1580, CN # 1580A (as described in Section 3.1(d) below), CN16-40, and/or CN17-22; all appeals resulting from those certificates and applications; and any other legal or regulatory matter related to the construction and/or establishment of the OBH hospital in Lacey and/or the HealthVest hospital in Lacey;

The Parties now enter into the following Agreement.

III. AGREEMENT

3.1 In consideration of HealthVest's agreement to reduce from 40 to 33 the number of psychiatric beds requested in the HealthVest 40 Bed Application; in consideration of the Department's agreement to grant a certificate of need for the establishment of an 85 bed psychiatric hospital in the OBH 85 Bed Application; in consideration of HealthVest's agreement to withdraw its objections to the OBH 85 Bed Application, to cooperate in the settlement and dismissal of Master Case Nos. M2017-544 and M2017-740, and not to bring any related actions or appeals; and to avoid the uncertainty, burden, inconvenience, distraction and expense of further legal or other proceedings in connection with or related to these matters, **Providence** will:

- a)** Permanently close its existing 20 psychiatric hospital beds at Providence St. Peter Hospital in Olympia upon the opening of the new 85-bed OBH hospital;
- b)** Voluntarily dismiss with prejudice its appeal in the Superior Court Action;
- c)** Waive and forego any further proceedings contesting the issuance of the HealthVest 75-Bed CN;
- d)** Waive and forego any proceedings contesting the Department's issuance of amended CN # 1580A eliminating the condition for HealthVest to partially fund its project with the now-expired Department of Commerce grant;
- e)** Withdraw its objections and waive any further proceedings contesting the HealthVest 40 Bed Application and the issuance of a 33-bed certificate of need to HealthVest;

f) Waive any opportunity to comment on the proposed settlement between the Department and HealthVest under RCW 70.38.115(10)(c) and WAC 246-310-610(4); and,

g) Otherwise waive and forego any other legal objection, appeal, or other interference with any permit, license, or other approval by any government entity or accreditation group in connection with HealthVest's construction and establishment of a 108-bed psychiatric hospital in Lacey, Washington, pursuant to the terms of this Agreement.

3.2 In consideration of HealthVest's agreement to reduce from 40 to 33 the number of psychiatric beds requested in the HealthVest 40 Bed Application; in consideration of the Department's agreement to grant a certificate of need for the establishment of an 85 bed psychiatric hospital in the OBH 85 Bed Application; in consideration of HealthVest's agreement to withdraw its objections to the OBH 85 Bed Application, to cooperate in the settlement and dismissal of Master Case Nos. M2017-544 and M2017-740, and not to bring any related actions or appeals; and to avoid the uncertainty, burden, inconvenience, distraction and expense of further legal or other proceedings in connection with or related to these matters, **UHS and Fairfax** will:

a) Waive and forego any objection or appeal contesting the issuance of the HealthVest 75 Bed CN or Providence's settlement of its claims regarding that issuance;

b) Waive and forego any proceedings contesting the Department's issuance of amended CN # 1580A eliminating the condition for HealthVest to partially fund its project with the now-expired Department of Commerce grant;

c) Withdraw its objections and waive any further proceedings contesting the HealthVest 40 Bed Application and the issuance of a 33-bed certificate of need to HealthVest;

d) Waive any opportunity to comment on the proposed settlement between the Department and HealthVest under RCW 70.38.115(10)(c) and WAC 246-310-610(4); and,

e) Otherwise waive and forego any other objection, appeal, or other interference with any permit, license, or other approval by any government entity or accreditation group in connection with HealthVest's construction and establishment of a 108-bed psychiatric hospital in Lacey, Washington, pursuant to the terms of this Agreement.

3.3 In consideration of HealthVest's agreement to reduce from 40 to 33 the number of psychiatric beds requested in the HealthVest 40 Bed Application; in consideration of the Department's agreement to grant a certificate of need for the establishment of an 85 bed psychiatric hospital in the OBH 85 Bed Application; in consideration of HealthVest's agreement to withdraw its objections to the OBH 85 Bed Application, to cooperate in the settlement and dismissal of Master Case Nos. M2017-544 and M2017-740, and not to bring any related actions

or appeals; and to avoid the uncertainty, burden, inconvenience, distraction and expense of further legal or other proceedings in connection with or related to these matters, **OBH** will:

- a) Submit to the Department information necessary to clarify the OBH 85 Bed Application, as set forth in Paragraph 3.7;
- b) Not admit any patient to its new psychiatric hospital in Lacey, Washington earlier than sixteen months after the date of this Agreement;
- c) Waive and forego any objection or appeal contesting the issuance of the HealthVest 75 Bed CN or Providence's settlement of its claims regarding that issuance;
- d) Waive and forego any proceedings contesting the Department's issuance of amended CN # 1580A eliminating the condition for HealthVest to partially fund its project with the now-expired Department of Commerce grant;
- e) Withdraw its objections and waive any further proceedings contesting the HealthVest 40 Bed Application and the issuance of a 33-bed certificate of need to HealthVest;
- f) Waive any opportunity to comment on the proposed settlement between the Department and HealthVest under RCW 70.38.115(10)(c) and WAC 246-310-610(4); and,
- g) Otherwise waive and forego any other objection, appeal, or other interference with any permit, license, or other approval by any government entity or accreditation group in connection with HealthVest's construction and establishment of a 108-bed psychiatric hospital in Lacey, Washington, pursuant to the terms of this Agreement.

3.4 In consideration of the Department's agreement to grant a certificate of need for 33 psychiatric beds in the HealthVest 40 Bed Application; in consideration of the Department's agreement to issue an amended CN # 1580A eliminating the condition for HealthVest to partially fund its project with the now-expired Department of Commerce grant, and the agreement of Providence, Fairfax, and OBH to bring no objection or appeal to CN # 1580A; in consideration of Providence's agreement to permanently close its existing psychiatric hospital beds at Providence St. Peter Hospital in Olympia upon the opening of the new 85-bed OBH hospital; in consideration of Providence's agreement to withdraw and dismiss its appeal of the HealthVest 75 Bed CN and not to bring any related actions or appeals; in consideration of the individual and collective agreements of Providence, Fairfax, and OBH to withdraw all objections to the HealthVest 40 Bed Application and not to bring any related actions or appeals; and to avoid the uncertainty, burden, inconvenience, distraction and expense of further legal or other proceedings in connection with or related to these matters, **HealthVest** will:

- a) Withdraw its objections and waive any further proceedings contesting the OBH 85 Bed Application and the issuance of an 85-bed certificate of need to OBH;
- b) Cooperate in the dismissal of Master Case Nos. M2017-544 and M2017-740;

c) Waive any opportunity to comment on the proposed settlement between the Department and Providence, Fairfax, and/or OBH under RCW 70.38.115(10)(c) and WAC 246-310-610(4); and,

d) Otherwise waive and forego any other objection, appeal, or other interference with any permit, license, or other approval by any government entity or accreditation group in connection with OBH's construction and establishment of an 85-bed psychiatric hospital in Lacey, Washington, pursuant to the terms of this Agreement.

3.5 To avoid the uncertainty, burden, inconvenience, distraction and expense of further legal or other proceedings in connection with or related to these matters, and to ensure the public interest is served through the timely development and operation of inpatient psychiatric hospital services in Thurston County, **the Department** will support, approve and accept the decisions of Providence, Fairfax, OBH, and HealthVest to dismiss their respective appeals and withdraw their respective objections pursuant to the terms of this Agreement; and take the actions set forth below.

3.6 The Parties agree that each of the certificates of need issued to OBH and HealthVest in Thurston County will contain the following conditions regarding patients civilly detained under the Involuntary Treatment Act:

So long as the state desires to contract with the facility for providing care to Involuntary Treatment Act (ITA) patients, [the CN holder] will contract with the state to provide that care. An ITA referral may only be rejected if there are no beds available at [the facility] at the time of referral or if such referral is clinically inappropriate.

On an annual, calendar year basis, at least 20% of the hospital's inpatient admissions shall be ITA patients. The Department of Health may hereinafter set a lower percentage of ITA admissions on a statewide basis.

The hospital shall maintain records documenting the following:

- Number of ITA patient referrals;
- Number of ITA patients admitted;
- Annual ITA admissions as a percentage of total hospital admissions; and,
- Reason for not accepting each declined ITA patient.

These records shall be provided to the Department on a semi-annual basis.

3.7 As of the execution of this Agreement, OBH has submitted to the Department information necessary to clarify the OBH 85 Bed Application.

3.8 Within seven business days from the execution of this Agreement, the Department agrees to complete its review of the information referenced in Paragraph 3.7. Following such review and by no later than January 2, 2018, the Department will issue a conditional approval of the OBH 85 Bed Application in the amount of 85 psychiatric beds. Upon OBH's acceptance of all conditions, the Department will issue an "Intent to Issue" a certificate of need to OBH for the establishment of an 85 bed psychiatric hospital. Provided, however, that issuance of an "Intent to

Issue” a certificate of need and subsequent certificate of need under this Agreement is not relevant to or a basis for any future certificate of need decisions or settlements.

3.9 Concurrent with the issuance of the conditional approval described in Paragraph 3.8, the Department agrees to issue amended CN # 1580A affirming HealthVest’s 75 bed certificate of need, eliminating the condition for HealthVest to partially fund its project with the now-expired Department of Commerce grant and incorporating the condition regarding Involuntary Treatment Act patients as set forth in Paragraph 3.6. A draft of CN # 1580A is attached to this Agreement as Attachment 1. The Parties agree that the issuance of CN # 1580A will render null and void CN # 1580. Provided, however, that issuance of an amended certificate of need under this agreement is not relevant to or a basis for any future certificate of need decisions or settlements.

3.10 Concurrent with the issuance of the conditional approval described in Paragraph 3.8, the Department agrees to issue an evaluation conditionally approving the HealthVest 40 Bed Application in the amount of 33 inpatient psychiatric beds, on conditions substantially similar to those imposed in CN # 1580A. Upon HealthVest’s acceptance of all conditions, the Department will issue a new certificate of need to HealthVest for 33 additional inpatient psychiatric beds at its previously-approved South Sound Behavioral Hospital. The Department agrees that it shall not be a condition of HealthVest’s 33-bed certificate of need that those 33 beds be commenced, constructed, or opened on a phased basis separate from the commencement, construction, and opening of HealthVest’s 75-bed certificate of need. Provided, however, that issuance of a certificate of need under this Agreement is not relevant to or a basis for any future certificate of need decisions or settlements.

3.11 HealthVest agrees to accept the Department’s reduction from 40 to 33 of the number of beds to be approved under its application CN17-22.

3.12 Within five business days following the Department’s issuance of the Intent to Issue described in Paragraph 3.8, Providence, Fairfax, and OBH individually and collectively agree to move to dismiss with prejudice the following proceedings challenging the Department’s denial of CN16-40:

In re: Certificate of Need Application of Providence Health & Services—WA d/b/a/ Providence St. Peter Hospital and BHC Fairfax Hospital Inc. to Establish a Psychiatric Hospital in Thurston County, Olympia Behavior Health LLC, BHC Fairfax Hospital, Inc., and Providence Health and Services—WA, Petitioners.
Adjudicative Service Unit Nos. M2017-544 and M2017-740 (consolidated)

3.13 Within five business days following the dismissal of the proceedings identified in Paragraph 3.12, Providence agrees to move to dismiss with prejudice the following case challenging the Department’s approval of CN #1580:

Providence Health & Services—Washington d/b/a Providence St. Peter Hospital v. Department of Health of the State of Washington, et al.
Thurston County Superior Court No. 17-2-06272-34

3.14 The Parties each agree to bear their own attorneys' fees and costs, and the Parties each agree not to seek costs or attorneys' fees incurred in any of the above-mentioned matters.

3.15 Following dismissal of the cases identified in Paragraphs 3.12 and 3.13 of this Agreement, HealthVest, Providence, UHS, Fairfax, and OBH each agree not to dispute, either through litigation or otherwise, any of the determinations made by the Department in the evaluation and approval of CN # 1580, CN # 1580A, CN16-40, and/or CN17-22.

3.16 Following dismissal of the cases identified in Paragraphs 3.12 and 3.13 of this Agreement, HealthVest further agrees not to dispute, either through litigation or otherwise, any additional legal or regulatory review or approval sought and/or received by OBH in relation to the establishment of an 85-bed psychiatric hospital in Lacey under the certificate of need issued on application CN16-40, including but not limited to land use, environmental review, building permits and/or other entitlements, licensure, and/or certification issues.

3.17 Following dismissal of the cases identified in Paragraphs 3.12 and 3.13 of this Agreement, Providence, UHS, Fairfax, and OBH further agree, individually and collectively, not to dispute, either through litigation or otherwise, any additional legal or regulatory review or approval sought and/or received by HealthVest in relation to the establishment of a 108-bed psychiatric hospital in Lacey under CN # 1580A and the certificate of need issued on application CN17-22, including but not limited to land use, environmental review, building permits and/or other entitlements, licensure, and/or certification issues.

3.18 Settlement of these matters shall not be construed as an admission on the part of any of the Parties as to the relative merits of any other Party's position in these matters.

3.19 This Agreement is proposed by the Parties and shall not be construed in favor of, or against, any party.

3.20 This Agreement represents the entire understanding of the Parties with regard to the subject matter addressed by this Agreement, and fully and finally settles all disputes, claims, and allegations among the Parties regarding the HealthVest project to establish a psychiatric hospital in Lacey, Washington, and regarding the OBH project to establish a psychiatric hospital in Lacey, Washington.

3.21 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

3.22 This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Washington.

3.23 The individuals signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

3.24 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

3.25 The Parties agree that in the event of a disagreement over the terms or conditions of this Agreement, the parties shall arbitrate the dispute. Judicial Dispute Resolution, LLC and Larry Jordan shall serve as the arbitrator in the event of an arbitration. The Department will not be responsible for any of the costs of the arbitration.

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IV. SIGNATURES

Each individual signing this document on behalf of each respective Party represents that he or she is authorized to bind that respective Party to this Agreement.

Dated this 11th day of December, 2017.

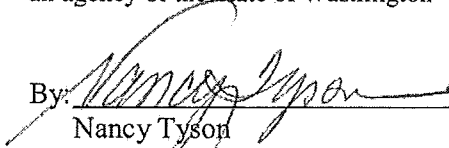
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Each individual signing this document on behalf of each respective Party represents that he or she is authorized to bind that respective Party to this Agreement.

Dated this 11th day of December, 2017.


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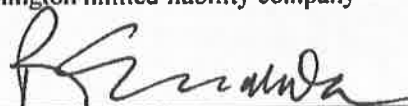
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